IN THE HIGH COURT OF JUDICATURE AT BOMBAY

APPELLATE SIDE

Writ Petition No. 7757 of 2004

Mr Basavraj Kalyani Hulgane...petitioner

vs

The State of Mah and ors.. respondents

Mr. R.K.Mendadkar for petitioner

Mr.C.R.Sonawane AGP for respondent nos. l to 4

Mr.S.V.Sakhare for respodnent nos. 5 to 7

CORAM: A.P.SHAH & S.U.KAMDAR JJ.

30th September, 2004

P.C.

Heard Advocates.

2. The petitioner obtained caste certificate as belonging to Lingder Scheduled Tribe. On the strength of this caste certificate the petitioner was appointed as Shikshan Sevak under the reserved

category in respondent no.7 school. The petitioner was asked by the management to furnish documents for verification of his caste certificate through the Scrutiny Committee. Inspite of several reminders the petitioner failed to furnish documents as demanded by the management and ultimately his services came to be terminated vide letter dated 25.3.2004. Being aggrieved the petitioner preferred Appeal No.23 of 2004 before the Grievance Committee which appeal was allowed and the petitioner was reinstated in service as Shikshan Sevak.

3. On 24.8.2004 the respondent no.2 Caste Scrutiny Committee issued show cause notice to the petitioner to show cause as to why his caste certificate should not be invalidated. The notice reads as follows:

"To

Shri Hulgane Basavaraj Kalyani

Shri S S Shelke Prashala

Wagdari Tal Akkalkot

Dist. Solapur.

Sub: Verification of caste certificate

Ref:l Your case no.B/I/32 service for verification of caste certificate in this office.

2.This office letter No PD/CCV/CC/ Evidence/Interview/Service-800/ dated 26.7.2004

Sir,

With reference to aforesaid letter, you case for verification of caste certificate is received by the Committee on 28.ll.2003. After going through the documents pertaining to verification of caste certificate, you were called by the Committee vide reference no.2 above, for interview alongwith additional evidence. However, you did not submit the required documents demanded during the interview.

From this it has come to the notice of the Committee that the documents/ evidence

> submitted by you pertain to Lingayat,which is serious matter. Your caste claim as belonging to Lingder does not prove from the available documents. You are therefore called upon to explain personally by 30.8.2004 to this office as to why caste certificate no.l39/95 dated 9.3.l995 issued by the Tahasildar and Executive Magistrate, Akkalkot Dist.Solapuor to you should not be invalidated, failing wich it will be presumed that you do not have to submit anything and exparte decision will be taken which be noted".
>
> (emphasis supplied)

The validity of the show cause notice is sought to be challenged by the petitioner mainly on the ground that the Scrutiny Commitee has no jurisdiction to act suomoto by issuing notice for verification of the caste certificate of the petitinoer. Secondly it is contended that Lingayat is a caste synonymus or a sub-caste of Lingder caste, which is notified as a Scheduled Caste under

the Scheduled Caste Order.

4. So far as the first contention is concerned section 7 of the Maharashtra Act 25 of 2000 clearly empowers the Scrutiny Committee to take suomoto action. Therefore the submission of the petitioner that the Caste Scrutiny Committee has no jurisdiction to issue suomoto notice is misconceived and must be rejected.

5. The second submission is that there is no difference between Lingder and Lingayat and both are one and the same. In the alternative it is contended that Lingayat is a sub-caste of Lingder. This submission cannot be entertained in view of the law laid down by the Constitution Bench of the Supreme Court in State of Maharashtra vs. Milind and ors (2001) 1 SCC 4. In paragraphs 15, 28 and 36(1) of the report, it was ruled thus:

> 15. Thus it is clear that States have no power or the Government of the day in a State is relieved from the pressure or

burden of tinkering with the Presidential Orders either to gain popularity or secure votes. Number of persons in order to gain advantage in securing admissions in educational institutions and employment in State Services have been claiming as belonging to either Scheduled Castes or Scheduled Tribes depriving genuine and needy persons belonging to Scheduled Castes and Scheduled Tribes covered by the Presidential Orders, defeating and frustrating to a large extent the very object of protective discrimination given to such people based on their educational and social backwardness. Courts cannot and should not expand jurisdiction to deal with the question as to whether a particular caste, sub caste; a group or part of tribe or sub tribe is included in any one of the entries mentioned in the Presidential Orders issued under Articles 341 and 342 particularlyn so when in clause (2) of the said article, it is expressly stated that the said order cannot

be amended or varied except by law made by Parliament. The power to include or exclude amend or alter Presidential Order is expressly and conclusively conferred on and vested with Patrliament and that too by making a law in that regard. The president had the benefit of consulting the States through Governors of States which had the means and machinery to find out and recommend as to whether a particular cases or tribe was to be included in the Presidential Order. If the said Orders are to be amended, it is Parliament that is in a better position to know having the means and machinery unlike courts as to why a particular caste or tribe is to be included or excluded by law to be made by Parliament. Allowing the State Governments or courts or other authorities or Tribunals to hold inquiry as to whether a particular caste or tribe should be considered as one included in the Schedule of the Presidential Order, when it is not specifically included, my

lead to problems, in order to gain advantage of reservations for the purpose of Article 15(4) or 16(4) several persons have been coming forward claiming to be covered by Presidential Orders issued under Articles 341 and 342. This apart, when no other authority other than Parliament, that too by law alone can amend the Presidential Orders. Neither the State Government nor the courts nor Tribunals nor any authority can assume jurisdiction to hold inquiry and take evidence to declare that a caste or tribe is included in Presidential Orders in one entry on the other although they are not expressly and specifically included. A court cannot alter or amend the said Presidential Orders for the very good reason that it has no power to do so within the meaning content and scope of Articles 341 and 342. It is not possible to hold that either any inquiry is permissible or any evidence can be let in, in relation to a particular caste or tribe to say whether it is included within

Presidential Orders when it is not so expressly included.

28. Being an respectful agreement we reaffirm the ratio of the two Constitution Bench judgments aforementioned and state in clear terms that no inquiry at all is permissible and no evidence can be let in to find out and decide that if any tribe or tribal community or part of or group within any tribe or tribal community is included within the scope and meaning of the entry concerned in the Presidential Order when it is no so expressly or specifically included. Hence, we answer Question 1 in the negative.

36(1) It is not at all permissible to hold any inquiry or let in any evidence to decide or declare that any tribe or tribal community or part of or group within any tribes or tribal community is included in the general name even though it is not specifically mentioned in the entry

concerned in the Constitution (Scheduled Tribes) Order, 1950."

(emphasis supplied)

6. In light of the decision of the Constitution Bench it is not permissible for the petitinoer to contend that caste Lingayat is a caste synonymus or a sub-caste of Lingder. Apart fromthis the State Government had appointed an expert Committee to inquire into the claim of the members belonging to Lingayat sect that Lingayat is a sub-caste of Lingder. The Committee has recorded a categorical finding that Lingayat is a sect and not a caste and Lingder is a caste. Therefore the claim that Lingayat and Lingder are same caste was rejected. This Court in Maharashtra Veershaiva Sabha Lingayat Lingder Sangharsha Samiti Kukari vs State of Maharashtra and ors (Writ Petition 556l of 2000 decided on 30.4.200l) has specifically rejected the claim that Lingayat is the same caste as Lingder. The Division Bench observed thus:

"Even on merits we find that the claim of

the petitioners that the Lingayat is the same caste as Lingder is without any substance. The expert Committee hass recorded that in no State/Province concerned Lingayat had been or has been notified as Scheduled Caste, whereas Lingder was notified in Bombay Presidence/ Maharashtra State,it was not notified as Schedsuled Caste in Hyderabad province as per the Constitution (SC) Order l950, its Amendment in l956 and l976. It has been notified as Scheduled Caste in Gujarat, Mahararashtra and Karnataka in S.C.(Amendment) Act l956 and l976. The committee has also found that no Lingayat whom the committee met during the field study claim that he or she is suffering from the stigma of untouchabilikty at any piont of time. It is seen from the report of the committee Lingayat is a sect of Hindu region in the sense that the founders of Veershaivism or Lingayatism have revolted against some inegalitarian practices of Hindu like observance of caste

system, untouchability, discrimination between man and woman in matters of individual social and religious rights, varnashram system,idea of rebirth status of Bramhanas, idol worshipping, mourning, non violence, traditional impact of Vedas. However, the stanuch followers of Veershaiva or Lingayatism have always professed that it is not a sect of Hindu religion and that it is a religion by itself which is saisd to be more ancient than Hinduism. It differs from Hindu religion in a number of ways, both in ritualistic patern and socio cultural practices. Thus Lingayats are non Hindus according to their admissino. No particular name is mentioned as the fuionders of Hindu religion, whereas in the case of Veershaiva religion,m, there are three streams of thought aboutt he founder. One, Shiva himself is the founder, another Panchacharyas are the founsders and third, Mahatma Basaveshwara is the founder. The committee had concluded that Veershaiva or

Lingayat religion is far different from Hinduism in all its fundamental principles and vies of life. Lingayat as religion is more humanistic, liberal, universal and with faith in equality,liberty,freedom, fraternity than Hinduism. It is professed as an independent religiion and not a branch of Hindu religion. The committee has observed that it is impossible to hold that Lingayat which is a religion is a part of the Lingder caste.

We may mention that earlier the State Government had asked Dr Ambedkar Research Training Institute to make a report on this issue. The committee appointed by Dr Ambedkar Reserch Training Institute elaborately considered the origin of the Lingayat religion and concluded that the Lingayat sect was founded by Basaweshear in l2th century. This committee is also of the opinion that Lingayat is a sect consisting of many castes, worshipping single God. The

> commitee found that there was a caste by name Lingayat Dhor in Lingayat sect. Accordingly to this committe Lingayats are basically divided into three classes i.e. Panchamshali, Panchamshali Bhayya, and Ardha Lingayat. The committee felt that the 3rd class of Lingayat include the caste Chambhar, Dhobi, koli and dhor, they have no right of Ashtavaran. Therefore the committee concluded that all Lingders can be Lingayats but all Lingayats cannot be Lingders".

In view of the above discussion it is not possible to accept the plea of the petitioner that Lingayat is synonymus to Lingder or it is a sub-caste of Lingder. Petitioner shall appear before the Scrutiny Commitee on ll.l0.2004. The Scrutiny Committee shall grant hearing to the petitioner and pass appropriate order in accordance with law within a period of three months. It is needless to say that if the petitinoer is found not belonging to Scheduled Tribe, the management of the

institution shall be entitled to take appropriate action in accordance with law.

Petition is accordingly disposed of.